



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 29  
TWO METRO TECH CENTER STE 5100  
FL 5  
BROOKLYN, NY 11201-3838

Agency Website: [www.nlrb.gov](http://www.nlrb.gov)  
Telephone: (718)330-7713  
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September 4, 2014

Eric LaRuffa, Esq.  
Richard M. Greenspan, P.C.  
220 Heatherdell Road  
Ardasley, NY 10502-1304

Diane Kristen, ESQ., Senior Labor Counsel  
2400 Yorkmont Rd  
Charlotte, NC 28217-4511

Re: Compass Lackman Culinary Services at  
Stony Brook  
Case 29-CA-132718

Dear Mr. LaRuffa and Ms. Kristen:

The Region has carefully considered the charge alleging that Compass Lackmann Culinary Services at Stony Brook (“the Employer”) violated the National Labor Relations Act. I have approved the withdrawal of the portion of the charge alleging that the Employer intimidated and coerced employees in an effort to have them agree to waive their contractual rights regarding their vacation pay and time. As explained below, I have decided that further proceedings on the remaining portions of the charge should be handled in accordance with the deferral policy of the National Labor Relations Board as set forth in *Collyer Insulated Wire*, 192 NLRB 837 (1971), and *United Technologies Corp.*, 268 NLRB 557 (1984). This letter explains that deferral policy, the reasons for my decision to defer further processing of the charge, and the Charging Party’s right to appeal my decision.

**Deferral Policy:** The Board’s deferral policy provides that the Board will postpone making a final determination on a charge when a grievance involving the same issue can be processed under the grievance/arbitration provision of the applicable contract. This policy is partially based on the preference that the parties use their contractual grievance procedure to achieve a prompt, fair, and effective settlement of their disputes. Therefore, if an employer agrees to waive contractual time limits and process the related grievance through arbitration if necessary, the Board’s Regional Office will defer the charge.

**Decision to Defer:** Based on our investigation, I am deferring further proceedings on the remaining portions of the charge in this matter to the grievance/arbitration process for the following reasons:

1. The Employer and the Local 1102, Retail Wholesale & Department Store Union, United Food & Commercial Workers have a collective-bargaining agreement currently in effect for the food service workers bargaining unit that provides for final and binding arbitration.

2. The Employer and the Local 1102, Retail Wholesale & Department Store Union, United Food & Commercial Workers had a collective-bargaining agreement in effect at the time of the alleged unfair labor practice for the cooks bargaining unit that provides for final and binding arbitration.

3. The allegation that the Employer violated Section 8(a)(1) and (5) of the Act by by-passing the Union and directly negotiated with employees regarding vacation pay and time as alleged in the charge is encompassed by the terms of the collective-bargaining agreements.

4. The Employer is willing to process grievances concerning the issues in the charge, and will arbitrate the grievances if necessary. The Employer has also agreed to waive any time limitations in order to ensure that the arbitrator addresses the merits of the dispute.

5. Since the issues in the charge appear to be covered by provisions of the collective-bargaining agreements, it is likely that the issues may be resolved through the grievance/arbitration procedure.

**Further Processing of the Charge:** As explained below, while the charge is deferred, the Regional office will monitor the processing of the grievance and, under certain circumstances, will resume processing of the charge.

*Charging Party's Obligation:* Under the Board's *Collyer* deferral policy, the Charging Party has an affirmative obligation to file a grievance, if a grievance has not already been filed. If the Charging Party fails either to promptly submit the grievance to the grievance/arbitration process or declines to have the grievance arbitrated if it is not resolved, I may dismiss the charge.

*Charged Party's Conduct:* If the Charged Party prevents or impedes resolution of the grievance, raises a defense that the grievance is untimely filed, or refuses to arbitrate the grievance, I will revoke deferral and resume processing of the charge.

*Monitoring the Dispute:* Approximately every 90 days, the Regional Office will ask the parties about the status of this dispute to determine if the dispute has been resolved and if continued deferral is appropriate. However, at any time, a party may present evidence and request dismissal of the charge, continued deferral of the charge, or issuance of a complaint.

*Notice to Arbitrator Form:* If the grievance is submitted to an arbitrator, please sign and submit to the arbitrator the enclosed "Notice to Arbitrator" form to ensure that the Region receives a copy of an arbitration award when the arbitrator sends the award to the parties.

*Review of Arbitrator's Award or Settlement:* If the grievance is arbitrated, the Charging Party may ask the Board to review the arbitrator's award. The request must be in writing and addressed to me. Under current Board law, the request should analyze

whether the arbitration process was fair and regular, whether the unfair labor practice allegations in the charge were considered by the arbitrator, and whether the award is consistent with the Act. Further guidance on this review is provided in *Spielberg Manufacturing Company*, 112 NLRB 1080 (1955) and *Olin Corp.*, 268 NLRB 573 (1984). These Board decisions are available on our website, [www.nlr.gov](http://www.nlr.gov). However, the current standard for review may change. The General Counsel's position is that the Board should modify its approach in Section 8(a)(1) and (3) cases and should not defer to an award unless the party urging deferral demonstrates that: (1) the contract had the statutory right incorporated in it or the parties presented the statutory issue to the arbitrator; and (2) the arbitrator correctly enunciated the applicable statutory principles, and applied them in deciding the issue. The General Counsel is also taking the position that the Board should not defer to a pre-arbitral-award grievance settlement in Section 8(a)(1) and (3) cases unless the parties intended the settlement to also resolve unfair labor practice issues.

**Charging Party's Right to Appeal:** The Charging Party may appeal my decision to defer this charge by filing an appeal with the General Counsel of the National Labor Relations Board, through the Office of Appeals. An appeal may be filed by submitting the enclosed Appeal Form (form NLRB-4767), which is also available at [www.nlr.gov](http://www.nlr.gov). However, we encourage the Charging Party to submit a complete statement setting forth the facts and reasons why the decision to defer the charge is incorrect.

*Means of Filing:* An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax or email. To file an appeal electronically, go to the Agency's website at [www.nlr.gov](http://www.nlr.gov), click on **E-File Documents**, enter the **NLRB Case Number**, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1099 14<sup>th</sup> Street, N.W., Washington, D.C. 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

*Appeal Due Date and Time:* The appeal is due on September 18, 2014. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than September 17, 2014. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

*Extension of Time to File Appeal:* The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the

request for an extension of time is **received on or before** September 18, 2014. The request may be filed electronically through the ***E-File Documents*** link on our website [www.nlrb.gov](http://www.nlrb.gov), by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after September 18, 2014, **even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also be sent to me.

*Confidentiality:* We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

/s/

JAMES G. PAULSEN  
Regional Director

Enclosures

cc: LOCAL 1102, RETAIL WHOLESALE &  
DEPARTMENT STORE UNION,  
UNITED FOOD & COMMERCIAL  
WORKERS  
1587 Stewart Ave  
Westbury, NY 11590-6612

Compass Lackmann Culinary Services at  
Stony Brook  
4450 SUNY - Stony Brook  
Stony Brook, NY 11794- 4459

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
**NOTICE TO ARBITRATOR**

TO: \_\_\_\_\_  
(Arbitrator)

\_\_\_\_\_  
(Address)

\_\_\_\_\_

NLRB Case Number  
**29-CA-132718**

NLRB Case Name: Compass Lackman Culinary Services at Stony Brook

A determination has been made by the Regional Director of Region 29 of the National Labor Relations Board to administratively defer to arbitration the further processing of the NLRB charge in the above matter. Further, both parties to the NLRB case have agreed to proceed to arbitration before you in order to resolve the dispute underlying the NLRB charge.

So that the Regional Director can be promptly informed of the status of the arbitration, the undersigned hereby requests that a copy of the arbitration award be sent to Regional Director, Region 29, TWO METRO TECH CENTER STE 5100, BROOKLYN, NY 11201-3838 at the same time that it is sent to the parties in the arbitration.

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

**APPEAL FORM**

To: General Counsel  
Attn: Office of Appeals  
National Labor Relations Board  
Room 8820, 1099 - 14th Street, N.W.  
Washington, DC 20570-0001

Date:

I am appealing the action of the Regional Director in deferring the charge in

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Case Name(s).

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Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

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*(Signature)*